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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,294	01/27/2004	Edward H. Kilduff	DLP/001	9190
7590 07/01/2005 Law Offices of Thomas J. Brindisi 20 28th Place, Suite B Venice, CA 90291			EXAMINER GARBER, CHARLES D	
			ART UNIT 2856	PAPER NUMBER
DATE MAILED: 07/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/765,294

Applicant(s)

KILDUFF ET AL.

Examiner

Charles D. Garber

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 15, 16 and 20 is/are rejected.
- 7) ☒ Claim(s) 8-14 and 17-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08/19/2004</u> .                                                          | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 15, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hein (US Patent 2,664,753).

Regarding claim 1, Hein discloses scoop 10 (a bucket) including at least one bottom wall 13 which is fixed; an opening (on the left side in the figures); a movable wall 16 or partition providing another wall for the scoop. The movable wall is connected to the scoop by a hinge at shaft 20 which is a rotating means. Its range of motion may be deduced from the figures. Item 28 is a handle connected to the scoop. Items 40, 41, 42, 43, 45, 46, 47 provide adjustment means for manually moving the movable wall on the hinge which will permit convenient selection of a desired scoop size within a maximum and a minimum size, by ready manual manipulation of said adjustment means.

As for claim 2, the hinge is shown positioned such that the movable wall is movable toward and away from the opening of the scoop.

As for claim 3, the scoop includes a front portion at lip 14 with ends 12 that are left and right aspects substantially symmetric to one another.

As for claim 4, shaft 20 is an axle and cylindrical portion 19 is an axle box.

As for claim 5, items 47 may temporarily secure the position of the movable wall once a desired scoop size has been selected.

As for claim 6, items 47 and 46 may be considered the same as grooves and ribs.

As for claim 7, lever 41 slides along handle 28 to permit a range of motion along at least part of said movable wall that exceeds the corresponding range of motion of the lever.

As for claim 15, the right side of the movable wall in figure 1 is a variable unused space on the side of the movable wall that is opposite from the opening. The adjustable measuring scoop does not include a cover attached to the movable partition that could substantially cover said variable unused space throughout said range of motion of said movable partition.

As for claim 16, the hinge discussed above is shown in the figures positioned such that the movable wall is movable toward and away from the opening of the scoop.

As for claim 20, items 47 may temporarily secure the position of the movable wall once a desired scoop size has been selected. Items 47 and 46 may be considered the same as grooves and ribs.

***Allowable Subject Matter***

Claims 8-14, 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claims 8, 9 and 17 include **supports restricting said range of motion of said manual slide to a linear path**. Lever 41 of the Hein invention follows a curvilinear path in operation and is not restricted to a linear path as in the instant invention. Simply restricting the lever to a linear path would disable the device of Hein without further modification of the hinge at 42.

Albrecht (US Patent 4,638,680) teaches a pin and slot arrangement as an alternative to a simple hinge but the link 52 that drives the hinged device is not restricted to a linear path.

Davey (US Patent 3,708,915) teaches plate 19 forming a moving member of a linear motor that rotates a door A. The member is shown constrained to move in a linear path (see figures 1-3). However, Davey teaches the door A may only be moved manually by disengaging the pin from the slot. Davey appears to teach away from using the member 19 manually to move the door and one having ordinary skill would not modify the invention of Hein to include a linear motor.

Claims 10-14, 18 and 19 depending from allowable claims above are allowable for the same reason.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg



**CHARLES GARBER**  
**PRIMARY EXAMINER**